

FILED



SEP 07 2006

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLERK, US DISTRICT COURT, WDNY

EILEEN ABATO

Plaintiff,

v.

Civil Action No. 06-cv-0134 E

NICHOLAS, PEROT, SMITH,
BERNHARDT & ZOSH P.C.

Defendant.

**ORDER GRANTING PLAINTIFF'S FIRST MOTION AGAINST
NICHOLAS, PEROT, SMITH, BERNHARDT & ZOSH P.C.
TO COMPEL DISCOVERY RESPONSES**

The court heard Plaintiff's First Motion against Nicholas, Perot, Smith, Bernhardt & Zosh P.C. to Compel Discovery Responses (hereinafter the "Motion") on the 18th day of August, 2006. After considering the Motion and the pleadings and other papers on file in this case, the court finds that the Motion should be and is in all things GRANTED.

The court finds that Nicholas, Perot, Smith, Bernhardt & Zosh, P.C., by failing to timely make disclosures as required by Fed.R.Civ.P. 26(a)(1), failing to respond to Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents (hereinafter the "Plaintiff's Discovery Requests"), and failing to timely object to any of Plaintiff's Discovery Requests waived any and all objections that it might have had to the Plaintiff's Discovery Requests.

It is therefore ordered that Nicholas, Perot, Smith, Bernhardt & Zosh P.C. shall, on or before September 13, 2006, serve upon the Plaintiff's attorney, at his office, full and complete responses to the Plaintiff's Discovery Requests by fully and completely answering all

interrogatories in, and producing all documents and tangible items responsive to the Plaintiff's Discovery Requests. Such service shall be in a manner to ensure receipt on or before that date by Kenneth R. Hiller, Esq., 2001 Niagara Falls Boulevard, Amherst, New York 14228.

It is further ordered that Nicholas, Perot, Smith, Bernhardt & Zosh P.C. shall pay to the Plaintiff \$750.00 as reasonable and necessary attorneys' fees for the drafting, filing and presentation of this motion. Such payment shall occur no later than September 13, 2006, and it shall be made in a manner ensuring receipt on or before that date by Kenneth R. Hiller, Esq., 2001 Niagara Falls Boulevard, Amherst, New York 14228. Such payment shall be in the form of a check made payable to Kenneth R. Hiller.

DATED:

Buffalo, N.Y.
September 1, 2006



HON. JOHN T. ELFVIN
S.U.S.D.J.